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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,403	04/03/2001	Kenneth W. Shrum	10003507-2	1629

22878 7590 11/06/2003

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EXAMINER

PHAM, HUNG Q

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/825,403

Applicant(s)

SHRUM ET AL.

Examiner

HUNG Q PHAM

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-4 and 10-13 have been considered but are moot in view of the new ground(s) of rejection. Claims 5-9 are withdrawn from consideration. Claims 1-14 are pending.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As in claim 10, the step of *configuring and executing user transaction tests and reporting user transaction test results* was not described in the specification.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. **Claims 10-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Hewlett-Packard Company [Firehunter,**

Regarding to claim 10, Hewlett-Packard discloses a method for measuring, monitoring, and reporting the performance of Internet services by using Firehunter with Firehunter/e-Commerce, which provides a link between transaction test updates and content changes on a hosted commerce site. The customers can use their browser to record Web pages and data they want included in transaction tests for running (page 12). To build and run a transaction test, a hosted customer is provided with the URL, login and password (page 21). After a transaction is built, it can be tested and the results are displayed in play mode (page 23). In short, the technique as discussed indicates the step of *configuring and executing user transaction tests and reporting user transaction test results*. As shown in pages 25-26 is the step of *measuring system performance data for each of the web server, the session server, the transaction server, and the*

*database server. As shown in pages 4-5 and pages 9-10 is the step of measuring business performance data comprising monetary volume transacted by the e-commerce installation during a time period.*

Regarding to claim 11, Hewlett-Packard teaches all the claimed subject matters as discussed in claim 10, Hewlett-Packard further discloses *the business performance data further comprises financial data transacted by the e-commerce installation during a time period* (page 19).

Regarding to claim 12, Hewlett-Packard teaches all the claimed subject matters as discussed in claim 10, Hewlett-Packard further discloses the steps of *processing the system performance data to generate system graphics illustrating system performance measured against system performance baselines and system performance thresholds; and processing the business performance data to generate business graphics illustrating billing performance measured against business performance baselines and business performance thresholds* (pages 16 and pages 4-8).

Regarding to claim 13, Hewlett-Packard teaches all the claimed subject matters as discussed in claim 10, Hewlett-Packard further discloses the step of *collecting the system performance data and the business performance data from the e-commerce installation; and transferring the system performance data and the business performance data to the computer system* (pages 25-26 and pages 4-10).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**6. Claims 1 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman et al. [USP 6,178,449 B1].**

Regarding to claim 1, Forman teaches a method for measuring transaction time in a computer system (Col. 1, lines 5-10). As shown in FIG. 4, a server system 1, a server system 2, a server system 3, and a client system 440 interconnected via a network. Server system 1 includes a server application 1, and also includes a

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transaction time manager 414. Server system 2 includes a transaction time manager 422. Server system 3 includes a server application 3 and further includes a transaction time manager 434. Client system 440 includes a client application 1, a client application 3, a transaction time agent 460, and a transaction time database 480. Transaction time agent 460 communicates directly with transaction time managers 414, 422, and 434 via SNMP interfaces. Transaction time database 480 provides an indexed database that may be queried rather than flat files. As a result, portions of config table 482 and stats table 484 may be written to or read from without writing/reading the entire file, as was the case for network computing environment 300. Transaction time database 480 therefore allows for efficient retrieval of only certain transaction time data. For example, if server system 1 is only interested in the transaction times for client application 1, transaction time agent 460 may efficiently retrieve only the requested information from stats table 484 (Col. 6, line 54-Col. 7, line 48). The stats table 484 is used to record the transaction time of the client application (Col. 8, line 47-Col. 9, line 32) as the performance measurements (Col. 1, lines 16-29). As seen, the transaction time manager 414 as a *software agent* is installed at each server, which has its own type of application, the server *retrieves and reads* the stats table 484 as a *log file*, queries the transaction time *database* 480 to obtain the transaction times as *information comprising performance measurement*. In other words, the Forman technique as discussed indicates the steps of *installing each of a plurality of software agents onto its own one of a plurality of servers, wherein each of the plurality of software agents retrieves at least one of the log files from it associated one of the plurality of servers, and wherein each of the plurality of servers is*

*associated with one of the plurality of tiers; reading the log files and querying the databases to obtain information stored therein, the information comprising performance measurements of the installation.* Forman does not explicitly teach the step of *graphically presenting the measurements*. However, as shown in FIG. 7, a transaction time manager 714 may request to query a transaction time agent 460 for the statistics regarding transaction times at any time. In response to this query, transaction time agent 460 may respond by sending the requested data from stats table 484 to the requesting transaction time manager 714 at any time (Col. 10, lines 36-61). As shown in FIG. 1, software applications run on host 110, and display information is transmitted by host 110 via communications controller 120 to terminals 130. In this manner a user sitting at a particular terminal 130 may start an application on host 110, and host 110 will then display an appropriate screen to the user at the appropriate terminal 130. The user may then enter data in response to the displayed screen, if required. Thus, data from stats table 484 could be displayed at a particular terminal 130. In other words, *the measurement is graphically presented*. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the Forman method by including the step of presenting the measurement in order to display the requested data from the transaction time database 480 or stats table 484.

Regarding to claim 14, Forman teaches a method for measuring transaction time in a computer system (Col. 1, lines 5-10). As shown in FIG. 4, a server system 1, a server system 2, a server system 3, and a client system 440 interconnected via a



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network. Server system 1 includes a server application 1, and also includes a transaction time manager 414. Server system 2 includes a transaction time manager 422. Server system 3 includes a server application 3 and further includes a transaction time manager 434. Client system 440 includes a client application 1, a client application 3, a transaction time agent 460, and a transaction time database 480. Transaction time agent 460 communicates directly with transaction time managers 414, 422, and 434 via SNMP interfaces. Transaction time database 480 provides an indexed database that may be queried rather than flat files. As a result, portions of config table 482 and stats table 484 may be written to or read from without writing/reading the entire file, as was the case for network computing environment 300. Transaction time database 480 therefore allows for efficient retrieval of only certain transaction time data. For example, if server system 1 is only interested in the transaction times for client application 1, transaction time agent 460 may efficiently retrieve only the requested information from stats table 484 (Col. 6, line 54-Col. 7, line 48). The stats table 484 is used to record the transaction time of the client application (Col. 8, line 47-Col. 9, line 32) as the performance measurements (Col. 1, lines 16-29). As seen, the transaction time manager 414 as a *software agent* is *associated with each of the server*, which has its own type of application, the server retrieves and reads the stats table 484 as a *log file*, queries the transaction time *database* 480 to obtain the transaction times as *information comprising performance measurement*. In other words, the Forman technique as discussed indicates the steps of *associating software agents to each of the servers; activating the software agents to access the log files on associated servers to obtain*

*performance measurements; activating the software agents to query the databases on the associated servers to obtain performance measurements.* Forman does not explicitly teach the step of *graphically presenting the measurements.* However, as shown in FIG. 7, a transaction time manager 714 may request to query a transaction time agent 460 for the statistics regarding transaction times at any time. In response to this query, transaction time agent 460 may respond by sending the requested data from stats table 484 to the requesting transaction time manager 714 at any time (Col. 10, lines 36-61). As shown in FIG. 1, software applications run on host 110, and display information is transmitted by host 110 via communications controller 120 to terminals 130. In this manner a user sitting at a particular terminal 130 may start an application on host 110, and host 110 will then display an appropriate screen to the user at the appropriate terminal 130. The user may then enter data in response to the displayed screen, if required. Thus, data from stats table 484 could be displayed at a particular terminal 130. In other words, *the measurement is graphically presented.* Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the Forman method by including the step of presenting the measurement in order to display the requested data from the transaction time database 480 or stats table 484.

7. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman et al. [USP 6,178,449 B1] in view of Hewlett-Packard Company [Firehunter, <http://web.archive.org/web/19991013073731/http://firehunter.com/>].

Regarding to claim 2, Forman teaches all the claimed subject matters as discussed in claim 1, but fails to disclose *the plurality of tiers comprises a web servers tier, a session servers tier, a transaction servers tier, and a database servers tier*. Hewlett-Packard discloses a method for measuring, monitoring, and reporting the performance of Internet services by using Firehunter with Firehunter/e-Commerce, which provides a link between transaction test updates and content changes on a hosted commerce site. The customers can use their browser to record Web pages and data they want included in transaction tests for running (page 12). Hewlett-Packard further discloses *the plurality of tiers comprises a web servers tier, a session servers tier, a transaction servers tier, and a database servers tier* (Hewlett-Packard, pages 25-26). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the Forman method by including a web server, a session server, a transaction server and a database server as taught by Hewlett-Packard in order to monitor an e-commerce service provider.

Regarding to claim 3, Forman and Hewlett-Packard teaches all the claimed subject matters as discussed in claim 2, but does not explicitly disclose *the web servers tier comprises a plurality of web servers with each of said the plurality of web servers generating log files, said the log files comprising hit rate data, hosts served data, data volume data, error rates data, log file size monitor data, system load data, and generic data, said the session servers tier comprises a plurality of session servers with each of said the plurality of session servers generating a plurality of log files, said the plurality of log files comprising*

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*users served data, restarts data, IM status data, IM load data, database connectivity data, error rates data and system load data, said the transaction servers tier comprises a plurality of transaction servers with each of said the plurality of transaction servers generating a plurality of log files and a plurality of databases, said the log files comprising open and discarded cart rates data, shoppers in store data, authorized, cancelled, declined data, payment service errors data, inventory status data, and system load data, and said the databases comprising sales per hour data, items sold per hour data, new order rates data, processed order rates data, fulfilled order rates data shipping network connectivity data, orders awaiting authorization data, and orders awaiting shipment data; and said the database servers tier comprises a plurality of database servers with each of said the plurality of database servers generating a plurality of databases, said the plurality of databases comprising database access performance data, database size monitor data, database connectivity error rate data, and system load data.*

However, as discloses by Hewlett-Packard, Firehunter/e-Commerce could extract information directly from server log files such as hit rates, error rates, other important Web log information, monitor TCP throughput, TCP port and CPU memory utilization, payment and order fulfillment (Hewlett-Packard, pages 19 and 25). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the Forman and Hewlett-Packard log files to include the data as above in order to monitor the performance of an e-commerce service provider.

Regarding to claim 4, Forman and Hewlett-Packard teaches all the claimed subject matters as discussed in claim 3, Hewlett-Packard further discloses *the user site is*

*a fully functional web-based business application or e-commerce monitoring solution*

(Hewlett-Packard, pages 13-14).


### **Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q PHAM whose telephone number is 703-605-4242. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KIM Y VU can be reached on 703-305-4393. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Examiner Hung Pham  
October 20, 2003

  
SHAHID ALAM  
PRIMARY EXAMINER